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06 UNITED STATES DISTRICT COURT
07 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

08 JOSE CRUZ MILAN AMADOR,)
09) CASE NO. C11-1378-RSM
Petitioner,)
10)
v.)
11) REPORT AND RECOMMENDATION
ICE FIELD OFFICE DIRECTOR,)
12)
Respondent.)
13 _____)

14 I. INRODUCTION AND SUMMARY CONCLUSION

15 Petitioner has filed a pro se petition for writ of habeas corpus under 28 U.S.C. § 2241,
16 challenging the lawfulness of his detention by the United States Immigration and Customs
17 Enforcement (“ICE”). (Dkt. No. 7.) He requests that the Court order his release from custody
18 on conditions or reasonable bond, arguing that “such custody violates the due process rights of
19 the Petitioner.” *Id.* at 1-2. Respondent has filed a motion to dismiss, arguing that petitioner
20 was provided a bond hearing before an immigration judge (“IJ”) who granted petitioner release
21 on \$10,000 bond. (Dkt. No. 8.) Respondent maintains that the IJ’s bond decision is not
22 subject to judicial review and this action should be dismissed for lack of jurisdiction. *Id.*

01 For the reasons set forth below, the Court recommends that respondent's motion to
02 dismiss be GRANTED, and that this matter be DISMISSED with prejudice.

03 II. BACKGROUND AND PROCEDURAL HISTORY

04 Petitioner is a native and citizen of Mexico, who entered the United States in January
05 2007 without being admitted or paroled. (Administrative Record ("AR") R43.) On
06 November 10, 2011, ICE encountered petitioner at the Lincoln County Jail in Newport, Oregon,
07 where he was in custody pending a charge of Assault in the Fourth Degree. *Id.* On January
08 10, 2011, petitioner was convicted of that charge and was sentenced to 65 days in jail with credit
09 for time served. *Id.* On January 11, 2011, petitioner was taken into ICE custody and
10 transferred to the Northwest Detention Center in Tacoma, Washington. (AR R39-44.)

11 On January 19, 2011, ICE served petitioner with a Notice to Appear, placing him in
12 removal proceedings and charging him as subject to removal from the United States under
13 Section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA"), for being present in
14 the United States without being admitted or paroled. (AR L8-9.) ICE determined that
15 petitioner could be released under bond of \$15,000. (AR L5.) Petitioner requested and
16 received a redetermination of ICE's custody decision by an IJ, who reduced the bond amount to
17 \$10,000. (AR L5, L32.) On March 27, 2011, petitioner again moved for a redetermination of
18 his custody status, requesting that the IJ reduce his bond amount to \$3,000. (AR L55-58.)
19 There is no indication in the Administrative Record whether this motion was granted or denied.

20 On August 2, 2011, petitioner moved for another bond redetermination, requesting that
21 the IJ reduce his bond to \$1,500. (AR L161-66.) On August 8, 2011, the IJ denied
22 petitioner's motion, citing "no changed circumstances. 8 C.F.R. 1003.19(e)." (AR L186.)

01 On August 16, 2011, the IJ denied petitioner’s applications for asylum, withholding of
02 removal, and relief under the Convention Against Torture, and ordered him removed from the
03 United States to Mexico. (AR L188.) On August 29, 2011, petitioner filed an appeal of the
04 IJ’s decision with the Board of Immigration Appeals (“BIA”), which remains pending.

05 III. DISCUSSION

06 Title 8, Section 1226 of the United States Code provides the framework for the arrest,
07 detention, and release of aliens in removal proceedings. *See* 8 U.S.C. § 1226. That provision
08 provides the Attorney General with discretionary authority to release an alien on bond or
09 conditional parole pending the completion of removal proceedings. *See id.* Section 1226(a)
10 provides, in part, as follows:

11 On a Warrant issued by the Attorney General, an alien may be arrested and detained
12 pending a decision on whether the alien is to be removed from the United States,
13 Except as provided in subsection (c) of this section and pending such decision, the
14 Attorney General –

13 (1) may continue to detain the arrested alien; and

14 (2) may release the alien on –

14 (A) bond of at least \$1,500 with security approved by, and containing
15 conditions prescribed by, the Attorney General; or

15 (B) conditional parole . . .

16 8 U.S.C. § 1226(a).

17 After an alien is arrested and taken into custody, the local ICE office makes an initial
18 custody determination, including the setting of bond. *See* 8 C.F.R. § 1236.1(c)(8), 1236.1(d).
19 After the initial custody determination, the alien may request a bond redetermination by an IJ.
20 *See* 8 C.F.R. § 1236.1(d). The alien may further appeal the IJ’s bond determination to the BIA.
21 *See* 8 C.F.R. § 1236.1(d)(3). Once an IJ has made an initial bond redetermination, an alien’s
22 request for a subsequent bond redetermination must be made in writing and must show that the

01 alien's circumstances have changed materially since the prior bond redetermination. *See* 8
02 C.F.R. § 1003.19(e).

03 In a bond hearing, the burden is on the detainee to show to the satisfaction of the IJ that
04 he or she warrants release on bond. *See Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006).
05 In making a bond decision, "an Immigration Judge must consider whether an alien who seeks a
06 change in custody status is a threat to national security, a danger to the community at large,
07 likely to abscond, or otherwise a poor bail risk." *Matter of Guerra*, 24 I&N Dec. at 40 (citing
08 *Matter of Patel*, 15 I&N Dec. 666 (BIA 1976)). An Immigration Judge may also consider any
09 number of discretionary factors, including:

10 (1) whether the alien has a fixed address in the United States; (2) the alien's length
11 of residence in the United States; (3) the alien's family ties in the United States, and
12 whether they may entitle the alien to reside permanently in the United States in the
13 future; (4) the alien's employment history; (5) the alien's record of appearance in
14 court; (6) the alien's criminal record, including the extensiveness of criminal
activity, the recency of such activity, and the seriousness of the offenses; (7) the
alien's history of immigration violations; (8) any attempts by the alien to flee
persecution or otherwise escape authorities, and (9) the alien's manner of entry to
the United States.

15 *Matter of Guerra*, 24 I&N Dec. at 40.

16 In the instant case, the administrative record shows that petitioner requested and
17 received a bond redetermination hearing on February 22, 2011, before an IJ who reduced his
18 bond to \$10,000. (AR L32.) In addition, petitioner sought and received a second bond
19 redetermination hearing on August 8, 2011, before an IJ who denied petitioner's bond motion,
20 finding "no changed circumstances. 8 C.F.R. § 1003.19(e)." (AR L128, L186.)

21 Petitioner argues that because he is unable to afford the \$10,000 bond imposed by the IJ,
22 the amount is unreasonable and violates his constitutional rights. He requests that this Court

01 release him on conditions or reasonable bond. (Dkt. No. 1 at 2.) Section 1226(e), however,
02 does not permit the Court to review the IJ's discretionary decision regarding the reasonableness
03 of the bond amount, even if petitioner cannot afford to post it. *Prieto-Romero v. Clark*, 534
04 F.3d 1053, 1067 (9th Cir. 2008). That provision provides: "The Attorney General's
05 discretionary judgment regarding the application of this section shall not be subject to review.
06 No court may set aside any action or decision by the Attorney General under this section
07 regarding the detention or release of any alien or the grant, revocation, or denial of bond or
08 parole." INA § 236(e), 8 U.S.C. § 1226(e). Thus, the Court lacks subject matter jurisdiction
09 to reach the merits of this claim.

10 IV. CONCLUSION

11 For the foregoing reasons, the Court recommends that respondent's motion to dismiss
12 be GRANTED, and that this matter be DISMISSED with prejudice. A proposed order
13 accompanies this Report and Recommendation.

14 DATED this 28th day of November, 2011.

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17 Mary Alice Theiler
18 United States Magistrate Judge
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